Supreme Court, U.S.
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No. 82-905

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

SOONER FEDERAL SAVINGS AND LOAN ASSOCIATION, KAY COUNTY FEDERAL SAVINGS AND LOAN ASSOCIATION, and FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF LAWTON,

Appellants

v.

OKLAHOMA TAX COMMISSION, and THE STATE OF OKLAHOMA,

Appellees

On Appeal from The Supreme Court of The State of Oklahoma

MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION TO AFFIRM

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December 1982

QUESTION PRESENTED

May a state tax dividends distributed by a federal home loan bank to a federally chartered savings and loan association?

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OKLAHOMA TAX COMMISSION, and THE STATE OF OKLAHOMA,

Appellees.

On Appeal from The Supreme Court of The State of Oklahoma

MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO AFFIRM

Appellee, Oklahoma Tax Commission, pursuant to Rule 16 of this Honorable Court, respectfully submits that this appeal should be dismissed, or in the alternative, that the decision of Mr. Vice-Chief Justice Barnes, all other Justices concur, of the Supreme Court of the State of Oklahoma, should be affirmed. Probable jurisdiction should not be noted. The decision of the Supreme Court of the State of Oklahoma is correct. The decision held that dividends received by federally chartered savings and loan associations from a federal home loan bank are subject to state income taxation as

permitted in 12 U.S.C. §1464 (h). The decision followed the holding of this Honorable Court in *First Federal Savings and Loan Association of Boston, et al, v. State Tax Commission, et al,* 437 U.S. 255, 98 S.Ct. 2333 (Mass: 1978).

THE OPINIONS BELOW

1. Order No. 79-12-04-06 of the Oklahoma Tax Commission entered on the 4th day of December, 1979, appears at pages 11-A through 15-A of the Appendix in the Jurisdictional Statement.

2. Opinion of the Supreme Court of the State of Oklahoma entered the 5th day of October, 1982, affirming the Order of the Oklahoma Tax Commission, appears at pages 1-A through 10-A of the Appendix in the Jurisdictional Statement.

THE PARTIES

The Oklahoma Tax Commission is the Appellee. The Oklahoma Tax Commission is exclusively designated by 68 O.S. 1981, §105 to represent the interests of the State of Oklahoma in such a case.

STATEMENT OF JURISDICTION

Appellee acknowledges the jurisdiction of the United States Supreme Court to review by writ of certiorari a decision of the Oklahoma Supreme Court involving the interpretation or effect of a federal statute.

However, Appellants assert that 28 U.S.C. §1257, subsection (2) confers jurisdiction upon this Honorable Court to review the decision of the Oklahoma Supreme Court. 28 U.S.C. §1257(2) states:

"§1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

To sustain the challenge of a state statute as repugnant to the Constitution or laws of the United States, the challenge of the state statute in the state Supreme court must be distinct and substantial. *House v. Road Improvement District No. 2 of Conway County, Ark., et al.*, 45 S.Ct. 60, 266 U.S. 175 (1924). In the instant case, Appellants failed to attack the validity of a state statute before the Oklahoma Supreme Court and the Oklahoma Tax Commission and are without jurisdictional grounds to question the validity of a statute on an appeal to the United States Supreme Court.

"(I)t is . . . the settled practice of this Court (U.S. Supreme Court), in the excercise of its appellate jurisdiction, that it is only in exceptional cases, and then only in cases coming from the federal courts, that it considers questions urged by a petitioner or appellant not pressed or passed upon in the courts below." *McColdrick v. Compagnie Generale Transatlantique*, 60 S.Ct. 670, 672, 309 U.S. 430, 434 (1940).

Appellants did not attack the provisions of the Oklahoma income tax laws in their protest filed pursuant to 68 O.S. 1971, §227 and 228, nor in the Petition in Error to

the Oklahoma Supreme Court. Appellants' Protest and Petition in Error are set out in full in the Appendix.

Appellants generally attacked the administration of the tax laws in Proposition III of their initial brief to the Supreme Court of Oklahoma, arguing that an administrative finding that dividends paid to a savings and loan association on their stock in the federal home loan bank are taxable income is in violation of constitutional and statutory provisions. Such an argument does not attack the validity of the state statute in a distinct and substantial manner.

Further, an administrative order may be considered a "statute" for jurisdictional purposes under 28 U.S.C. 1257 (2) if it is legislative in nature. *Hamilton v. Regents of the University of California*, 55 S.Ct. 197, 293 U.S. 245 (1934). In *Hamilton* an order was issued by a land grant state university requiring compulsory military training. The Court, in finding that the order was indeed a "statute" as applies to "statute of any state", held at page 202 that:

> "The assailed order prescribes a rule of conduct, and applies to all students belonging to the defined class .... The meaning of "statute of any state" is not limited to acts of state Legislatures. It is used to include every act legislative in character to which the state gives sanction, no distinction being made between acts of the state Legislature and other exertions of the state lawmaking power."

In the case of *Lathrop v. Donohue*, 81 S.Ct. 1826, 367 U.S. 820, (1961), the Court again discussed what "statute" means within the phrase "statute of any state" as used in 28 U.S.C. §1257 (2). *Lathrop* dealt with the question of whether an order of the Wisconsin Supreme

Court integrating the Wisconsin Bar was a statute as called for at 28 U.S.C. §1257 (2). The Court in *Lathrop* based their definition of statute on whether the order was adjudicatory or legislative in nature. The Court at page 1829 held that:

> "Integration of the Bar in Wisconsin bore no resemblance to adjudication. . . . (T)he court sought to regulate the profession by applying its orders to all present members of the Bar and to all persons coming within the described class in the future. As such, the action had the characteristics of legislation."

The Court in *Lathrop*, found that the order was legislative in nature and within the meaning of "statute" in 28 U.S.C. §1257 (2).

In the case at bar the administrative order is adjudicatory in nature, issued on an individual taxpayer's protest proceeding. The Oklahoma Tax Commission's Order does not prescribe a rule of conduct for a class of individuals as called for in the *Hamilton* and *Lathrop* cases. The Order was issued after the administrative hearing at which evidence was presented and a finding was made as to the particular facts involved. As such, it is an adjudicatory order which does not fall within the meaning of a "statute" under 28 U.S.C. §1257 (2).

Further, the Questions Presented at page -i- of the Jurisdictional Statement do not question the validity of a state statute.

Wherefore, Appellee respectfully submits that Appellants have failed to establish a jurisdictional basis for review by appeal of the decisions of the Oklahoma Supreme Court rendered October 5, 1982.

THE QUESTION PRESENTED FOR REVIEW

The Supreme Court of the State of Oklahoma affirmed the Order of the Oklahoma Tax Commission denying a refund of state income tax paid by Appellants. In affirming the Order of the Oklahoma Tax Commission, the Oklahoma Supreme Court recognized the Congressional permission to the state to levy and enforce a non-discriminatory income tax on federally chartered savings and loan associations in 12 U.S.C. §1464 (h), which provides:

> "No state, county, municipal or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institution."

The Oklahoma Supreme Court did not agree with Appellants' main contention that 12 U.S.C. §1433 exempts from state taxation dividends on stock issued by Federal Home Loan Banks. The Oklahoma Court found that §1433, supra, by its very language, exempts the Federal Home Loan Bank from state taxation and in no way refers to the federally chartered savings and loan associations.

Therefore, the question presented in this case is:

Whether subsection (h) of 12 U.S.C. §1464 permits Oklahoma to tax dividends disbursed by a Federal Home Loan Bank to its stockholders, Appellant, savings and loan associations, as income of said stockholders?

STATEMENT OF THE CASE

This case involves the administration of a state tax statute. Appellants do not attack the constitutionality or validity of a state statute. Rather, Appellants claim an exemption from state taxation under both federal and state statutes, 12 U.S.C. §1433 and 68 O.S. Supp. 1974, §2358, subsection A.2., which provides:

> "A. Taxable income and, where use of adjusted gross income is necessary, i.e., required by this act, adjusted gross income shall be adjusted as follows to arrive at Oklahoma taxable income and Oklahoma adjusted gross income:
>
> * * *
>
> "2. There shall be deducted amounts included in such income amounts that the state is prohibited from taxing because of the provisions of the Federal Constitution, the State Constitution, federal laws or laws of Oklahoma. . . ."

All the facts were presented to the Oklahoma Tax Commission, the administrative tribunal, upon stipulation, as follows:

(1) The claimants (Appellants) are federally chartered savings and loan associations.

(2) Claimants (Appellants) are required to own stock in the Federal Home Loan Bank as a condition of membership in the Federal Home Loan Bank system.

(3) The claimants (Appellants) received dividends on the Federal Home Loan Bank Stock owned by them in the years 1972, 1973 and 1974 and subsequent income tax years.

(4) Claimants (Appellants) voluntarily reported and paid Oklahoma corporation income taxes on said dividends under the "Oklahoma Income Tax Code", §2351 et seq., of Title 68, Oklahoma Statutes, in the total amount, for Oklahoma corporation income tax years 1972, 1973 and 1974, of $13,802.12, which taxes are claimed by the State solely by virtue of the dividends received by these associations on the Federal Home Loan Banks Stocks owned by the respective claimants.

(5) The Federal Home Loan Bank in which claimants (Appellants) own stock is organized and exists by virtue of an act of Congress, the Federal Home Loan Bank Act, 12 U.S.C., §1402 et seq.

(6) That the Congressional history of 12 U.S.C. §1433 reveals that the section was enacted to provide funds more cheaply to home buyers.

(7) Section 6(c) of the Federal Home Loan Bank provides a formula for the amount of stock each member association must own and maintain as long as it retains bank membership, which amount is directly related to the members' advances, i.e., as the amount of stock paid in by member associations increases, its maximum amount of aggregate outstanding stock increases.

A copy of the 1975 letter from the General Counsel for the Federal Home Loan Bank Board, set out at pages 21-A through 32-A of the Appendix of the Jurisdictional Statement was offered and admitted into the record at the administrative hearing. Same has been superceded by the decision in *First Federal Savings and Loan Association of Boston, et al. v. State Tax Commission, et al.*, supra.

The Oklahoma Tax Commission denied Appellants' claim that dividends disbursed by a Federal Home Loan Bank to its stockholders were exempt from state taxation by 12 U.S.C. §1433, by Order No. 79-12-04-06 (Appellants' Appendix, pages 11-A through 15-A).

Upon appeal, pursuant to 68 O.S. Supp. 1980, §225, the Oklahoma Supreme Court affirmed the administrative ruling.

APPELLEE'S ARGUMENT IN SUPPORT OF ITS MOTION TO DISMISS

The issue presented is not novel or one of first impression. The issue can be stated in three prongs, to-wit:

1. Does 12 U.S.C. §1464 permit state taxation of the income of federal savings and loan associations notwithstanding 12 U.S.C. §1433?

2. Do the dividends distributed by a federal home loan bank retain the color of net income of the federal home loan bank? and,

3. Are the dividends distributed by a federal home loan bank income to the savings and loan associations?

The United States Supreme Court decisions have settled all of these aspects of this case. In *First Federal Savings and Loan Association of Boston, et al. v. State Tax Commission, et al.*, supra, a state tax measured by net operating income on federal savings and loan associations was challenged. In holding in favor of the state taxing authority, the United States Supreme Court went directly to the issue of the non-discriminatory taxation aspect of §1464(h), supra, thereby treating §1464(h) as congressional consent to state taxation of

the income of federal savings and loan associations. The Court thus answered the first prong of the issue in the affirmative.

Also, it should be noted that in *Tradesman National Bank v. Oklahoma Tax Commission*, 309 U.S. 560, 60 S.Ct. 688 (Okl: 1940), dividends distributed by a federal reserve bank to its stockholders were included in the tax computation and the Court upheld such inclusion under 12 U.S.C. §548 as a non-discriminatory tax.

The distributed dividends do not retain the protective cloak of net income of the Federal Home Loan Bank. And, Appellants' contention that a tax on the dividend income of federally chartered savings and loan associations constitutes taxation of the net income of the Federal Home Loan Bank rejects the case law restricting the doctrine of *McCulloch v. Maryland*, 4 Wheat. 316, 4 L.Ed. 579 (1819). This Honorable Court clearly limited and strictly confined the grasp of the *McCulloch* doctrine to those instances where the taxpayer actually stands in the Government's shoes, in *United States v. New Mexico*, 102 S.Ct. 1373 (1982). This confinement is based upon a long line of United States Supreme Court decisions allowing nondiscriminatory state taxation. In *Oklahoma Tax Commission v. Texas Co.*, 336 U.S. 342, 69 S.Ct. 561, (Okl: 1949) the Supreme Court restricted the rule of constitutional immunity of federal instrumentalities so as not to protect non-Indian lessees of mineral rights in allotted and restricted Indian lands from nondiscriminatory gross production tax. *Graves et al. v. People of State of New York ex rel. O'Keefe*, 306 U.S. 466, 59 S.Ct. 595 (NY: 1939), held that the governmental immunity from taxation, as a principle of constitutional construction, should be narrowly restricted and does not prohibit a nondis-

criminatory state income tax upon the salary of an employee of the Federal Home Owners' Loan Corporation.

Thus, the distributed dividends from the Federal Home Loan Bank do not remain protected from state taxation as the net income of a federal instrumentality.

Upon distribution, the dividends are owned by the federal savings and loan associations and are income to the associations. In *Fox Film Corporation v. Doyal*, 286 U.S. 123, 52 S.Ct. 546, 547 (NY: 1932), the issue of state tax on copyrights was before the Court. The Court, in holding in favor of the state taxing authority, quoted *Indian Motorcycle Co. v. United States*, 283 U.S. 570, 576, 51 S.Ct. 601, 603, 75 L.Ed. 1277 (Mass: 1931) wherein the immunity under *McCulloch*, supra, was held not to extend to "anything lying outside or beyond governmental functions and their exertion." The *Fox*, supra, decision states at p.547:

> "... The property of the United States is not subject to state taxation (Van Brocklin v. Tennessee, 117 U.S. 151, 6 S.Ct. 670, 29 L.Ed. 845), but the property of individual owners, although derived from the United States under its public land laws, may be taxedx. *The power to tax exists as soon as the ownership is changed*.. ..." (Emphasis Added)

Wherefore, Appellee respectfully requests this Honorable Court to dismiss the appeal of Appellants. Appellants have not established jurisdiction for review by appeal under 28 U.S.C. 1257 (2). Appellants seek review of settled issues.

APPELLEE'S ARGUMENT IN SUPPORT OF ITS MOTION TO AFFIRM

The decision of the Supreme Court of the State of Oklahoma herein recognizes the distinctions, between the Home Owners Loan Act of 1933 and the Federal Home Loan Bank Act, for purposes of state taxation, and should be affirmed by this Honorable Court.

The Home Owners' Loan Act of 1933, 12 U.S.C. §1461 et seq., provided for the establishment of federal savings and loan associations to conduct limited public banking business. *Fahey v. Mallonee*, 332 U.S. 245, 67 S.Ct. 1552 (Cal: 1947). The Federal Home Loan Bank Act, 12 U.S.C. 1420 et seq., provided a national reserve banking system for the federal savings and loan associations and other similar member and nonmember qualifying financial institutions. *Federal Home Loan Bank of San Francisco v. O'Melveny & Myers, et al.*, 200 F.2d 420 (9th C.C.A.: Cal: 1952). These Acts, designed to provide greater supply and flow of low-cost funds for home financing, were enacted within one year of each other based upon the same congressional hearings. *Laurens Federal Savings & Loan Association v. South Carolina Tax Commission*, 365 U.S. 517, 81 S.Ct. 719, 5 L.Ed. 2d 749 (S.C.: 1961). These two Acts, when read together present a unitary scheme to meet a public need. From these two Acts, the income producing aspects of the savings and loan associations and the authority of the states to tax such income within the overall scheme is apparent.

12 U.S.C. §1464, which authorizes the organization of federally chartered savings and loan associations and mandates automatic membership of the associations in a Federal Home Loan Bank, also permits the several states to impose a tax upon the income of the associations, to wit:

"12 U.S.C. §1464(h)

No state, county, municipal, or local taxing authority shall impose any tax on such associations on their franchise, capital, reserves, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

12 U.S.C. §1426, which authorizes the issuance of stock, inter alia, by a Federal Home Loan Bank, provides for the distribution of dividends, to wit:

"12 U.S.C. §1426 (k)

All stock of any Federal Home Loan Bank shall share in dividend distributions without preference."

12 U.S.C. 1433 which exempts the Federal Home Loan Banks from state taxation, states in part:

"The bank, including *its* franchise, *its* capital, reserves, and surplus, its advances and *its* income, shall be exempt from all taxation. . . ." (Emphasis Added)

And, 12 U.S.C. §1436 places certain reserve and charge-off limitations on distribution of dividends by a Federal Home Loan Bank, to wit:

"12 U.S.C. §1436

. . . No dividends shall be paid except out of net earnings remaining after all reserves and charge-offs required under this chapter have been provided for, . . ."

Thus, the scheme of these acts include an intent that federally chartered savings and loan associations

should enjoy dividend income from the Federal Home Loan Bank stock paid without preference out of net earnings of the Federal Home Loan Bank, and that the savings and loan associations should pay state tax imposed in a nondiscriminatory manner on their respective incomes. In enacting these Acts, Congress did not declare the federally chartered savings and loan associations to be federal instrumentalities nor did it grant an exemption of dividend income from state taxation. Instead it enacted §1433, supra, revealing the awareness of Congress of the need to expressly protect its purely governmental entities from state taxation. Section 1433, supra, protecting the Federal Home Loan Bank, does not expressly include the income of federally chartered savings and loan associations in the tax immunization, as 12 U.S.C. §931, includes every National Farm Loan Association. And the Oklahoma Supreme Court refused to extend §1433, supra, to prohibit the states from taxing these dividends in the hands of federal savings and loan associations, as urged by Appellant. Such a construction would render §1464 (h) nugatory and disregard the decision in *United States v. New Mexico*, supra.

Appellants have not asserted that the Oklahoma income tax laws are administered in a discriminatory manner, nor do they deny that their incomes, other than from Federal Home Loan Bank stock, are subject to state taxing powers as are other similar financial institutions located within Oklahoma. Instead, they assert that the Oklahoma Supreme Court avoided a 1975 opinion of the General Counsel of the Federal Home Loan Bank Board and the opinions in *Pittman v. Home Owners Loan Corporation*, 308 U.S. 21, 84 L.Ed. 11 (Md: 1939) and *Laurens Federal Savings and Loan*

Association v. South Carolina Tax Commission, 365 U.S. 548, 89 L.Ed. 1171 (S.C.: 1961).

These two cases held that a state tax levied upon either a federal home loan bank or an intermediary for the recording of mortgages or executing of notes was invalid as being a tax on a government instrumentality. In both cases, the Court considered the taxed activities to be indispensable elements of the lending operation required for the protection of the lending institution.

The Oklahoma income tax is not upon advances, which was the situation in *Pittman*, supra, nor is it a tax on promissory notes executed by member banks thus affecting the basic functions of the home loan bank, as was the situation in *Laurens*, supra. The Oklahoma income tax does not, in any way, interfere with any of the indispensable elements of the claimant lending institutions. Nor does the Oklahoma tax interfere with the basic reason for the exemption, as manifested by the "Act's overall policy of making... mortgage funds available at low costs to home owners," as in the *Laurens*, supra, case. Also see: *Helvering v. Mountain Producers Corporation*, 303 U.S. 376, 58 S.Ct. 623 (Wash: 1938) and *Educational Films Corporation of America v. Ward*, 282 U.S. 379, 51 S.Ct. 170 (NY: 1930).

The decisions in *Pittman*, supra, and *Laurens*, supra, were based on the legislative intent of the Act which was to provide low cost home loans. The dividends in this case are paid out of surplus earned from the lending of low cost home loans.

The decision on appeal herein follows the opinions of the United States Supreme Court in *First Federal Savings and Loan Association of Boston, et al. v. State Commission, et al.*, supra, in holding the questioned

dividends subject to state taxation under 12 U.S.C. 1464 (h) and in *United States v. New Mexico*, supra, in refusing to declare Appellants exempt from state taxation as federal instrumentalities.

Wherefore, Appellee respectfully requests this Honorable Court, in the alternative, to affirm the unanimous decision of the Supreme Court of the State of Oklahoma, thus clarifying that 12 U.S.C. §1433 specifically exempts income of a Federal Home Loan Bank from state taxation and 28 U.S.C. §1464 (h) authorizes nondiscriminatory state taxation of federally chartered savings and loan associations, including dividends received from the Federal Home Loan Banks.

CONCLUSION

Appellee respectfully submits that this appeal should be dismissed for lack of jurisdiction under 12 U.S.C. §1257 (2) or because the issues involved are settled by prior decisions of this Court; or, in the alternative, the decision of the Supreme Court of Oklahoma should be affirmed without further review.

Respectfully submitted,

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December 28, 1982

June 17, 1976

Mr. Kenneth H. Thomason, Director
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Re: File # 758629 1972 RBM
File # 777403 1973 RBM
File # 708843 1974 RBM

Sooner Federal Savings & Loan Assoc.

Dear Ken:

You have previously sent to Sooner Federal Savings and Loan Association your denial of their protest as it relates to the taxability of dividend income received by the taxpayer's from the Federal Home Loan Bank stock.

Previously we have forwarded to you authority for the non-taxability of these dividends, to-wit: §13 of the Federal Home Loan Bank Act, Public Law 304; 47 Statute 725, 12 USC 1421 et seq. This section specifically states that:

"Any and all notes, debentures, Bonds and other such obligations issued by any bank, and consolidated Federal Home Loan Bank bonds and debentures shall be exempt both as to principal and interest from all taxation . . . The Bank, including its franchise, its capital, reserves, and surplus, its advances, *AND ITS INCOME* shall be exempt from all taxation now or hereafter imposed by the United States, by an Territory, dependency, or possession thereof, or by *ANY STATE,* county, municipality, or local taxing authority;

This section has been interpreted in General Counsel's (Federal Home Loan Bank Board) opinion dated October 29, 1975, to-wit:

> "Dividends on Federal Home Loan Bank Stock paid to member associations are not subject to State Income Taxes."

In the light of §13 and the General Counsel's memorandum opinion, the Taxpayers do hereby protest the proposed deficiency assessment for the years 1972, 1973 and 1974 and respectfully request a hearing before the Oklahoma Tax Commission.

This protest should also incorporate the proposed deficiencies against:

First Federal Savings & Loan Association of Lawton

File # 755261 RBM 1972
File # K01048 1973
File # 706145 1974, and

Kay County Federal Savings and Loan

File # 752791 1972 RBM
File # 769134 1973 RBM
File # 700468 1974 RBM

Your prompt setting of this matter before the Tax Commission will be appreciated.

Yours very truly,

E. JOHN EAGLETON
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EDWARD L. JACOBY
Attorney

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

SOONER FEDERAL SAVINGS & LOAN ASSOCIATION, KAY COUNTY FEDERAL SAVINGS & LOAN ASSOCIATION AND FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF LAWTON:;

Plaintiffs,

vs

OKLAHOMA TAX COMMISSION, and THE STATE OF OKLAHOMA,

No. _____

Defendants.

PETITION IN ERROR

Plaintiffs in Error, Sooner Federal Savings & Loan Association, Kay County Federal Savings & Loan Association and First Federal Savings & Loan Association of Lawton, for their Petition In Error, respectfully show the Court as follows:

(a) This appeal is taken from Order No. 79-12-04-06 of the Oklahoma Tax Commission dated and mailed the 4th day of December, 1979.

(b) The style of the Oklahoma Tax Commission case was:

IN THE MATTER OF THE PROTEST OF SOONER FEDERAL SAVINGS AND LOAN ASSOCIATION,

KAY COUNTY FEDERAL SAVINGS & LOAN ASSOCIATION AND FIRST FEDERAL SAVINGS & LOAN ASSOCIATION OF LAWTON TO THE DENIAL OF CLAIMS FOR REFUNDS OF INCOME TAXES.

No. P-77-014 or P-79-014

(c) Plaintiffs in Error appeal from the Commission's Order in favor of the State of Oklahoma and denying Plaintiffs in Error request for a refund of income taxes for the years 1972, 1973 and 1974.

(d) The issue of law to be argued as error is whether the State of Oklahoma may tax dividends received by the Plaintiffs in Error on stock held by said Plaintiffs in the Federal Home Loan Bank.

(e) Plaintiffs in Error request that this Court reverse the Order of the Oklahoma Tax Commission and enter a Judgment finding that dividends from Federal Home Loan Bank Stock are exempt from taxation by the State of Oklahoma and that the Plaintiffs in Error are entitled to a cumulative tax refund of Thirteen Thousand Eight Hundred, Two and 12/100 DOLLARS ($13,802.12) for the years 1972, 1973 and 1974 plus statutory interest thereon.

(f) Petitioners in Error contend that the taxation, by the State of Oklahoma, of the Federal Home Loan Bank dividends violates Title 68 O.S. §2358A(2) and further violates Title 12 U.S.C. §1433 and Title 31 U.S.C. § 742.

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